

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

HARBINGER CAPITAL PARTNERS LLC,  
PHILIP A. FALCONE, AND PETER A. JENSON,

Defendants.

Case No. 12-cv-05028 (PAC)

ECF Case

**ORAL ARGUMENT REQUESTED**

**DECLARATION OF ROBERT W. POMMER IN SUPPORT OF DEFENDANT  
PETER A. JENSON'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

I, Robert W. Pommer III, do hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. As a member in good standing in this Court, I respectfully submit this declaration in connection with the Memorandum of Law In Support of Defendant Peter A. Jenson's Motion to Dismiss Plaintiff's Complaint, which is submitted concurrently herewith.

2. I am a partner at Kirkland & Ellis LLP, 655 Fifteenth Street N.W., Washington, D.C. 20005, (202) 879-5950, attorney of record for Defendant Peter A. Jenson in the above captioned matter.

3. Attached hereto as Exhibits 1-5 is a true and complete copy of the following documents:

- a. Exhibit 1 - Sidley Austin LLP Draft Memorandum, dated September 22, 2009;
- b. Exhibit 2 - Sidley Austin LLP Initial Term Sheet, dated September 15, 2009;
- c. Exhibit 3 - Executed Loan Agreement, dated October 14, 2009;

- d. Exhibit 4 - Special Situations Fund Annual Financial Statement, for year ended December 31, 2009; and
- e. Exhibit 5 - Talking Points Email, dated March 16, 2010.

Executed on: November 30, 2012

By: /s/

Robert W. Pommer III (RP-5328)

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**Attorney for Defendant**

**Peter A. Jenson**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DECLARATION IN SUPPORT OF DEFENDANT PETER JENSON'S MOTION TO DISMISS** was served electronically via the Court's Electronic Case Filing system on the following:

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**Attorneys for Defendant Harbinger Capital Partners LLC**

/s/

Robert W. Pommer III